BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.	R.05-04-005 (Filed April 7, 2005)
Rulemaking for the Purposes of Revising General Order 96-A Regarding Informal Filings at the Commission.	R.98-07-038 (Filed July 23, 1998

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (GENERAL ORDER 96-B)

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedures (Rules), the Division of Ratepayer Advocates (DRA) submits these Reply Comments on the Proposed Decision (PD) of Commissioner Chong, mailed July 23, 2007, regarding Telecommunications Industry Rules in General Order (GO) 96-B.

I. INTRODUCTION

DRA responds to the comments of other parties and, where these comments raise issues DRA did not address in its Opening Comments, identifies DRA's position and any needed changes to the PD.

II. DISCUSSION

A. Requiring Carriers to Certify That Their Filings Comply with Commission and Legal Requirements Is a Reasonable Step in Conjunction with Accelerated Advice Letter Approval

Joint Commenters and Sprint Nextel object to the requirement that carriers must certify that proposed new services comply with all Commission requirements, will not degrade existing services, and will not be activated for individual customers unless a customer actually requests the service.[1] Sprint goes so far as to assert that it would be an "insuperable hurdle" to have to verify that its new services comply with all applicable laws and regulations.[2] To the contrary, DRA submits that, if these providers are concerned that their new services may not comply with existing law, may degrade existing service, or may be forced on customers, the Commission should be taking steps to ensure that providers do a much better job of training their personnel about acceptable business practices and screening their new services before they are offered to customers. An inescapable tradeoff for reduced regulatory scrutiny is the expectation (and mandate) that the Commission can rely upon carriers to be responsible for meeting basic standards, such as complying with existing laws, and that they can attest to such compliance.

[1] Opening Comments of Cox Communications, Time Warner Telecom of California and XO Communications Services ("Joint Commenters"), 8/13/07, at 4-5; Sprint Nextel Opening Comments, 8/13/07, at 12-13.

[2] Sprint Nextel Opening Comments, 8/13/07, at 12-13.

B. The Commission Staff Is Competent to Determine If Advice Letters Raise Issues That Require Hearing

AT&T asserts that Rule 7.4 violates carriers' due process by enabling Commission Staff to "reject an already effective advice letter…should Staff believe formal proceedings are necessary.[3] AT&T suggests that this would grant Staff the power to "make fundamental policy decisions" rather than limiting Staff's authority to "reject or dispose of advice letters on a ministerial basis," which AT&T admits is appropriate.[4] AT&T overstates its case.

AT&T focuses only on URF Tier 1 advice letters, relying on the determination under URF that "Tier 1 advice letters are effective immediately and staff cannot suspend an already effective advice letter."[5] AT&T appears to suggest that, if Commission Staff cannot suspend a Tier 1 advice letter, it cannot reject a Tier 1 advice letter. But Rule 7.4 is not as open-ended and discretionary as AT&T's arguments would suggest. Rather than being an affirmative grant of additional power to Staff to dispose of advice letters, Rule 7.4 merely addresses those advice letters that should not have been filed as advice letters at all. It does not even apply to those circumstances in which an advice letter is filed improperly as "Tier 1," and should have been filed as a Tier 2 advice letter that requires informal Staff approval or a Tier 3 advice letter that requires informal Commission approval via a resolution. Instead, Rule 7.4 is clearly intended to address formal matters that are not even within the rubric of GO 96-B.

Just as "an erroneous designation" of an advice letter as Tier 1, 2, or 3 "is not binding on Staff" per Industry Rule 7, a carrier's submission of a formal matter by advice letter, rather than by an application or petition for modification, should not be "binding on Staff." It would be a ridiculous outcome if Staff could reject a Tier 1 advice letter without prejudice if the carrier has not met "applicable customer notice requirements,"[6] but could not reject a purported "Tier 1 advice letter" without prejudice if the substance of the advice letter should have been raised in an application or petition, rather than an advice letter.

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[3] AT&T Opening Comments, 8/13/07, at 8.

[4] *Id.* at 8-10.

[5] *Id.* at 10 (footnote omitted).

[6] *See* Rules 7.1 and 7.2.

Furthermore, AT&T fails to make the case that Rule 7.4 creates any opportunity for Staff to "make fundamental policy decisions" that are prohibited by D.02-02-049.[7] In D.02-02-049, the Commission discussed extensively how the delegation of the authority to suspend advice letters to Staff is a lawful delegation.[8] The same logic is properly applied to a delegation in which Commission Staff is able to reject a purported "Tier 1 advice letter" on the grounds that the matter requires formal proceedings. The Commission in D.02-02-049 discusses the circumstances under which Staff actions requiring discretion and judgment do not amount to prohibited "policy decisions,"[9] and goes so far as to state that "Staff's role in reviewing advice letters is analogous to the role of an Assigned Commissioner or Administrative Law Judge in conducting a formal proceeding."[10]

Finally, Rule 7.4 provides Commission Staff with clear guidance by identifying four specific grounds for rejection of an advice letter, such as "a request by an URF Carrier to modify or cancel a provision, condition, or requirement imposed by the Commission in an enforcement, complaint, or merger proceeding." Thus, the Commission has already made the fundamental policy decisions about what carriers can and cannot request in an advice letter, and merely restates that policy for Staff and carriers in the form of Rule 7.4. In adopting Rule 7.4, the PD is simply directing Staff to *implement* policies that the Commission has already established.

C. The Commission Should Retain Rule 5.5

Sprint Nextel complains that wireless carriers were not given sufficient notice regarding the requirement in proposed Rule 5.5 that CMRS providers maintain public schedules with their rates, charges, terms, and conditions.[11] Sprint Nextel admits, however, that it has been

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[7] *See id.* at 9-10.

[8] *See, e.g.,* D.02-02-049, *mimeo*, at 5-11.

[9] *Id.*

[10] *Id.* at 11.

[11] Sprint Nextel Opening Comments, 8/13/07, at 10-12. Sprint Nextel's actual complaint seems to be that subsequent proceedings (such as URF, which did not include consideration of this rule) somehow implied that Rule 5.5 "was no longer under consideration." *Ibid.* at 10. In Sprint Nextel's view (which has no foundation in the Commission's rules), that unspoken presumption would have denied parties an opportunity for comments.

aware of the proposed rule for over six years,[12] over which time R.98-07-038 has offered many opportunities for comment.[13] Hence, there is no plausible claim that carriers were denied an opportunity to be heard.

As to Sprint Nextel's concern that Rule 5.5 is inconsistent with current regulatory developments, just the opposite is true. The Rule 5.5 requirement that CMRS rates and service conditions for untariffed services be available publicly is essentially the same requirement that the Commission is proposing for untariffed services offered by URF carriers.[14] It is, therefore, a step toward a uniform regulatory framework. Furthermore, Sprint Nextel itself notes that CMRS providers already comply with this requirement,[15] suggesting that Rule 5.5 is not unduly burdensome for CMRS providers. DRA does not object to Sprint Nextel's proposed clarifications that publicly available information need only include generally available service terms and rates and can be described as "information" as opposed to a "schedule." DRA also suggests that the Commission help ensure that Rule 5.5 is implemented in a competitively neutral manner by specifying that the information must be published online on the CMRS carriers' Internet site.

III. CONCLUSION

For all of the reasons discussed above and in DRA's August 13, 2007 Opening Comments, DRA respectfully requests that the Commission revise the PD to reflect the changes identified in DRA's Opening Comments.

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[12] Sprint Nextel Opening Comments, 8/13/07, at 10.

[13] PD at 5-6.

[14] R.06-06-028, Proposed Decision of Commissioner Chong, mailed 8/3/07, at 5.

[15] Sprint Nextel Opening Comments, 8/13/07, at 11.

Respectfully submitted,

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August 20, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (General Order 96-B)"** in **R.05-04-005 and R.98-07-038** by using the following service:

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Executed on the 20th day of August, 2007 at San Francisco, California.

/s/ Angelita Marinda

ANGELITA MARINDA

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